

K.S.A. 44-534a lists specific issues which are appealable to the Appeals Board from a preliminary hearing order of an administrative law judge. The issue regarding whether claimant suffered accidental injury is an issue listed specifically in K.S.A. 44-534a as jurisdictional and as such the Appeals Board has jurisdiction to hear this issue. The entitlement to temporary total disability benefits and medical benefits are not listed in K.S.A. 44-534a as jurisdictional issues, appealable from a preliminary hearing order and as such the Appeals Board will not consider these issues in this opinion.

Claimant alleges injury on August 3, 1993, while working for the respondent as a roofer. Claimant testified that on the date of injury he was lifting a ladder up to a second story roof and felt a pulled muscle in his back, neck and shoulders. Everett Reicher, Jr., the owner of the company, was working with claimant on that date and testified that claimant, having injured his back seriously in the past, was not allowed on the roof that day and was not pulling the ladder up to the roof. Instead, it was Mr. Reicher himself who was pulling the ladder up to the roof.

Claimant further testified that he advised Mr. Reicher on the date of injury of the injury. Mr. Reicher also controverts this statement saying claimant at no time advised him of any work-related injury on the date of the alleged injury. Mr. Reicher went on to testify that claimant disappeared from work after that date with Mr. Reicher's pickup and, according to outside sources, claimant went to the lake for a week. Upon returning to his employment, when Mr. Reicher asked claimant where he had been, claimant advised that he had gone to the lake to recuperate from the accident.

Claimant went to Wesley Medical Center on August 5, 1993, two (2) days after the alleged injury. During the visit to Wesley, he was told he had just pulled a muscle. Claimant did not again seek medical care until March 1994.

The ultimate decision in this matter hinges upon the credibility of the two witnesses in the record. Claimant testified to accidental injury and notice to respondent's owner. Mr. Reicher testified to no accident and no timely notice. Claimant's credibility is further negatively affected by the lack of any medical treatment for seven (7) months after the August 5, 1993 trip to Wesley Medical Center.

The Administrative Law Judge had the opportunity to view the witnesses during testimony and to assess their demeanor and credibility. In reviewing the evidence, the Appeals Board finds significant conflict between claimant's allegations and the testimony of Mr. Reicher. As such, the Appeals Board finds the decision of the Administrative Law Judge in affording the more significant credibility to that of Mr. Reicher's testimony is appropriate and well founded. The Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that he suffered accidental injury while employed with respondent on August 3, 1993.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson dated August 12, 1994, shall be and hereby is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Randall J. Price, Wichita, Kansas
 Richard A. Boeckman, Great Bend, Kansas
 George R. Robertson, Administrative Law Judge
 Philip S. Harness, Director